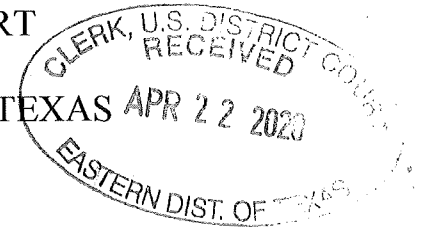


PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)  
ADOPTED BY ALL FEDERAL COURTS IN TEXAS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



PETITION FOR A WRIT OF HABEAS CORPUS BY  
A PERSON IN STATE CUSTODY

CRUISE K. SMITH  
PETITIONER  
(Full name of Petitioner)

Michael Kennedy  
Allen B. Polunsky Unit  
CURRENT PLACE OF CONFINEMENT

VS.

LORIAN DAVIS, DIRECTOR

2220920 131603  
PRISONER ID NUMBER

6:20CV204 JDK/JDL

RESPONDENT  
(Name of TDCJ Director, Warden, Jailor, or  
authorized person having custody of Petitioner)

CASE NUMBER  
(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum. The petition, including attachments, may not exceed 20 pages.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).
8. Failure to notify the court of your change of address could result in the dismissal of your case.

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**PETITION**

**What are you challenging?** (Check all that apply)

- ☐ A judgment of conviction or sentence, (Answer Questions 1-4, 5-12 & 20-25)  
probation or deferred-adjudication probation.
- ☐ A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)
- ☐ A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)
- ☐ Other: \_\_\_\_\_ (Answer Questions 1-4, 10-11 & 20-25)

**All petitioners must answer questions 1-4:**

**Note:** In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or that is under attack: 203RD JUDICIAL DISTRICT COURT FOR DALLAS COUNTY, TEXAS  
A 30 years sentence. Robbery
  2. Date of judgment of conviction: September 2018
  3. Length of sentence: 30 year
  4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: FL 875257 - Robbery
-

5. What was your plea? (Check one) ☒ Not Guilty ☐ Guilty ☐ Nolo Contendere
6. Kind of trial: (Check one) ☐ Jury ☒ Judge Only
7. Did you testify at trial? ☐ Yes ☒ No
8. Did you appeal the judgment of conviction? ☐ Yes ☒ No
9. If you did appeal, in what appellate court did you file your direct appeal? Denied Right to Appeal and Appeal Court Cause Number (if known): None

What was the result of your direct appeal (affirmed, modified or reversed)? None

What was the date of that decision? None

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: None

Result: None

Date of result: None Cause Number (if known): None

If you filed a petition for a writ of certiorari with the United States Supreme Court, answer the following:

Result: None

Date of result: None

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state applications for a writ of habeas corpus that you may have filed. ☒ Yes ☐ No

11. If your answer to 10 is "Yes," give the following information:

Name of court: 203RD Judicial District Court Dallas County Texas

Nature of proceeding: Habeas Corpus

Cause number (if known): F1875257

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: SEE COURT DATE DENIED 2019

Grounds raised: 1. Trial court denied A right to habeas corpus and appeal counsel, 2. Ineffective assistance of appeal counsel, 3. State's suppression order, A right to counsel for 30 days new trial

Date of final decision: September 19, 2019

What was the decision? DENIED

Name of court that issued the final decision: Texas Court of Criminal Appeals

As to any second petition, application or motion, give the same information:

Name of court: NONE

Nature of proceeding: NONE

Cause number (if known): W18-75257-PCAD (P.B.)

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court:

MAY 6 2019

Grounds raised: trial court denies to habeas corpus, state's suppression of evidence, right to habeas corpus

Date of final decision: September 19, 2019

What was the decision? DENIED without written order

Name of court that issued the final decision: Texas Court of Criminal Appeals

*If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.*

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition? ☐ Yes ☒ No

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: NONE

(b) Give the date and length of the sentence to be served in the future: NONE

(c) Have you filed, or do you intend to file, any petition attacking the judgment for the sentence you must serve in the future? ☐ Yes ☒ No

**Parole Revocation:**

13. Date and location of your parole revocation: None

14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation? ☐ Yes ☒ No

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

**Disciplinary Proceedings:**

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon? ☐ Yes ☒ No

16. Are you eligible for release on mandatory supervision? ☐ Yes ☒ No

17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation: None Applied

Disciplinary case number: None Applied

What was the nature of the disciplinary charge against you? None Applied

18. Date you were found guilty of the disciplinary violation: None Applied

Did you lose previously earned good-time days? ☐ Yes ☒ No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:

None Applied

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:

None Applied

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure? ☐ Yes ☒ No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: None Applied

Date of Result:

None Applied

Step 2 Result:

None Applied

Date of Result:

None Applied

**All petitioners must answer the remaining questions:**

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

- A. **GROUND ONE:** Trial Court denied Applicant a Rights to Appeal and a Right to Appeal Counsel

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Applicant was denied a Rights to Appeal Counsel and Applicant was indigent and never waived Counsel after conviction or informed the rights to Appeal.

- B. **GROUND TWO:** Trial Counsel ineffective Assistance to prepare a an Appeal.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Applicant was denied Rights to Appeal Counsel and a Rights to effective Appeal Counsel to Appeal denied Applicant Appeal Counsel without due process laws.



C. **GROUND THREE:**

of counsel to Requests for Acquittal when the  
stated key witnesses could not identify Applicant

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The trial counsel ineffective  
assistance to present evidence that no  
evidence was produced or admitted  
to any proof of a video camera to  
support applicant on trial or committed crime.

D. **GROUND FOUR:**

stated prosecution knowingly  
suppression of police report that the victim  
could not identify Applicant and as the robbery

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The stated knowingly suppressed  
the evidence to the police report  
and the rights to the video camera  
or any proof the applicant  
committed crime.

21. Relief sought in this petition:

Grant a Acquittal and  
Remove the conviction from the  
petitioner Records.

## GROUND FIVE

Applicant was denied Appeal Counsel to file a Motion for new trial within 30 days of conviction to raise no evidence or void conviction.

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The - Right to Counsel file a motion for new trial within 30 days of conviction to raise no evidence and void conviction, Applicant denied counsel.



22. Have you previously filed a federal habeas petition attacking the same conviction, parole revocation or disciplinary proceeding that you are attacking in this petition? ☐ Yes ☒ No  
If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.

First writ

If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)? ☐ Yes ☒ No

23. Are any of the grounds listed in question 20 above presented for the first time in this petition? ☐ Yes ☒ No

If your answer is "Yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

All ground presented.

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed. None

25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: None
- (b) At arraignment and plea: None
- (c) At trial: None
- (d) At sentencing: None
- (e) On appeal: None Applied
- (f) In any post-conviction proceeding: None

**Timeliness of Petition:**

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.<sup>1</sup>

No timely filed

<sup>1</sup> The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), as contained in 28 U.S.C. § 2244(d), provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.


Wherefore, petitioner prays that the Court grant him the relief to which he may be entitled.

  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on

February, 2020 (month, day, year).

Executed (signed) on February 20, 2020 (date).

  
Signature of Petitioner (required)

Petitioner's current address: CRUISE K. SMITH # 220926  
3872 FM 350 South Livingston, TX 77351

Mr. Michael Kennedy POLWICK Ant  
3872 FM 350 South Livingston Texas 77351

Michael Kennedy  
#1516203  
Polunsky unit  
3872 FM 350 South  
Livingston, TX 77351

Special

Clerk,  
U.S. District Court  
211 W. Ferguson St.  
TYLER, TX 75702

